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10/709,775	05/27/2004	James Panyard	81096680 / FMC 1705 PUS	3774
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BROOKS KUSHMAN P.C./FGTL				MCDONALD, SHANTESE L
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/709,775
Filing Date: May 27, 2004
Appellant(s): PANYARD ET AL.

MAILED
APR 07 2006
Group 3700

Matthew M. Mietzel
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/19/06 appealing from the Office action mailed 10/4/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,907,802	Schneider	6-2005
5,615,575	Goodwin	4-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,15,16,18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Schneider.

Schneider teaches a hose clamp installation tool comprising a housing,10, having a distal end, a beveled tab (fig. 1, 43), disposed on the distal end for engaging a clamp, an engagement surface, 42, disposed adjacent to the tab for engaging the clamp to release the clamp from an open position to allow the clamp to shift to a closed position, (col. 5, lines 9-13, and a sensor that detects the shifting of the clamp, (col. 6, lines 1-17), and a power source for providing power to the sensor, and an output device for providing information to an operator based on the signal from the sensor, (col. 8, lines 1-17).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Goodwin.

Schneider teaches all the limitations of the claims except for the sensor being a load cell. Goodwin teaches a load cell, 92, which measures clamping force, (col. 4, lines 1-2 and col. 5, lines 1-15). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to provide the invention of Schneider with a load cell in order to sense the clamping force, in order to more efficiently control the clamping of the hose.

(10) Response to Argument

The Applicant argues that Schneider (5,907,802), does not disclose an engagement surface that is fixedly positioned relative to a tab that engages a clamp to release the clamp from an open position. The Applicant further argues that axial rod, 42, cannot properly be considered an engagement surface as claimed since it does not engage the clamp to release the clamp from an open position. The Applicant states that the sleeve, 40, of Schneider is extended to engage and release the clamp.

The Examiner disagrees. The Schneider reference teaches that, "axial rod, 42, is anchored at its proximal end in housing, 12, distal end, 42a, of rod, 42, projects through distal end, 12b, of housing, 12, and provides a fixed contact or engagement surface for engagement with clamp 20. Distal end, 42a, of rod, 42, comprises a hooked portion, 43, which is used to engage clamp, 20, (col. 5, lines 6-16). The reference teaches states that the axial rod, provides an engagement surface for engagement with

Art Unit: 3723

the clamp. The Examiner notes that the engagement surface is interpreted to be the under section, of axial rod, 42, to the left of the hook portion, 43, that is uncovered by sleeve, 40, as well as the under side of the hook, 43, as shown in fig. 2. The claim does not specify that the engagement surface has to be a separate element. Schneider explains the activation step of the clamp, and it states that, "hook portion, 43, is inserted into slot, 28a, of the ring member, 22, formed between cross bar, 28, and crossbar, 27, and engages crossbar, 27 or 28, depending on the orientation of the hook portion, 43, (col. 6, lines 1-5). Given this explanation, if the engagement surface is the under section, of axial rod, 42, to the left of the hook portion, 43, that is uncovered by sleeve, 40, as well as the under side of the hook, 43, then this surface does come into contact with the clamp during the release step.

In reference to the argument that the sleeve, 40, cannot be considered an engagement surface because it is not fixedly positioned relative to the hook portion. The Examiner note that the sleeve is not being considered the engagement portion, and the sleeve 40, does not completely cover the entire surface of the engagement surface, as interpreted by the Examiner, when it is extended, and inherently there would be a portion of the engagement surface that is not covered by the sleeve that will stay in direct engagement with the clamp during the release step.

In reference to claim 15, the Applicant argues that Schneider does not disclose any structure that could properly be considered an arm, and that axial rod, 42, having a hooked portion, 43 cannot properly be considered an arm since it does not have an engagement surface that contacts the clamp to release the clamp from an open to

closed position. The Examiner disagrees, the Schneider reference does teach an arm, which is the axial rod, 42, and it does have an engagement surface that contacts the clamp, as explained in reference to the above response.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Shantese McDonald



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